

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Kotzin )  
For: A Method and System for )  
Managing Access to Presence )  
Attribute Information )  
Serial No.: 10/749,321 )  
Filed: December 31, 2003 )  
Examiner: Lee, C. )  
Art Unit: 2181 )

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

**APPELLANTS' BRIEF**

This brief is in furtherance of the NOTICE OF APPEAL, mailed on April 14, 2008.

Any fees required under 37 C.F.R. §41.20, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)):

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## **I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Motorola, Inc., a Delaware corporation.

## **II. RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are no such appeals or interferences.

## **III. STATUS OF CLAIMS**

### **A. Status of all claims in the proceeding**

1. Claims rejected: 1-23
2. Claims allowed: none
3. Claims withdrawn: none
4. Claims objected to: none
5. Claims cancelled: none

### **B. Identification of claims being appealed**

The claims on appeal are: 1-23

#### **IV. STATUS OF AMENDMENTS**

There have been no responses filed after the most recent Official Action made final, dated December 13, 2007.

#### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

A first aspect of the present invention (claim 1), which is being appealed, pertains to a presence attribute information server (22). The presence attribute information server (22) includes a processor (26), an interface unit (30) and a storage unit (28). The interface unit (30), which is coupled to the processor (26), includes a network interface (32) for receiving and transmitting user presence attribute information (page 8, lines 16-17). The storage unit (28), which is coupled to the interface unit (30) and the processor (26), includes user presence attribute information (24) and associated access authorization information (25), that is organized and arranged as one or more entries in a data structure (page 8, lines 5-9). The access authorization entries (60) are each associated with corresponding user presence attribute information entries (44). Each user presence attribute information entry (44) has a presence attribute value field (48), a user field, and one or more access condition entries (page 8, lines 5-9). The presence attribute value field (48) corresponds to one or more types of presence attributes (46), the user field (62) identifies one or more users (page 12, lines 15-17), and the one or more access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified one or more users (page 12, lines 17-19).

A further aspect of the present invention (claim 15), which is being appealed, pertains to a presence attribute information manager application. The presence attribute information manager application includes a processor (26), an interface unit (30) and a storage unit (28). The interface unit (30), which is coupled to the processor (26), includes a data input device (42) for receiving user presence attribute information from the user (page 10, lines 6-10) and a network interface (32) for transmitting user presence attribute information (page 9, line 29 to page 10, line 2). The storage unit (28), which is coupled to the interface unit (30) and the processor (26),

includes user presence attribute information (24) and associated access authorization information (25), that is organized and arranged as one or more entries in a data structure (page 8, lines 5-9). The access authorization entries (60) are each associated with corresponding user presence attribute information entries (44). Each user presence attribute information entry (44) has a presence attribute value field (48), a user field (62), and one or more access condition entries (page 8, lines 5-9). The presence attribute value field (48) corresponds to one or more types of presence attributes (46), the user field (62) identifies one or more users (page 12, lines 15-17), and the one or more access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified users (page 12, lines 17-19).

A still further aspect of the present invention (claim 23), which is being appealed, pertains to a method (100) for managing the access to user presence attribute information. The method (100) includes receiving a request (102) for user presence attribute information. The user requesting the user presence attribute information is then identified (104). A determination is then made as to whether the user requesting the information is authorized to have access to the requested user presence attribute information (page 15, lines 3-5). The determination of whether the user requesting the information is authorized includes receiving (106) any conditions relative to the requesting user associated with receiving access to the information. A determination (108) is then made as to whether the received conditions associated with receiving access have been met. If the user has met the conditions associated with receiving access (page 15, lines 9-10), the user presence attribute information is then forwarded (110) to the requesting user.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claims 1, 6, 7, 10, 11, 15, 16 and 19-22 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Raverdy et al., US Patent No. 6,957,217, in view of Applicant's Admitted Prior Art.
2. Whether claims 2-5, 13, 14 and 23 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Raverdy et al., US Patent No. 6,957,217, in view of Applicant's Admitted Prior Art, and further in view of Wade et al., US Patent No. 5,552,776.

## VII. ARGUMENT

### A. Rejections under 35 U.S.C. 103

1. Whether claims 1, 6, 7, 10, 11, 15, 16 and 19-22 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Raverdy et al., US Patent No. 6,957,217, in view of Applicant's Admitted Prior Art.

#### Claims 1, 6, 7, 10, 11, 15, 16 and 19-22

The Examiner rejected claims , 6, 7, 10, 11, 15, 16 and 19-22 as being unpatentable over Raverdy et al., US Patent No. 6,957,217, in view of alleged applicant's admitted prior art (AAPA). The applicant respectfully disagree with both the Examiner's characterization of the facts, as well as the Examiner's legal conclusions. More Specifically, contrary to the assertions of the Examiner, the claims are not made obvious in view of the teachings of the references, either alone, or in combination, in so far as the references fail to make known or obvious each and every feature of the claims. Most notably, the combination of references cited by the Examiner and relied upon in support of the rejection, fail to make known or obvious a user field associated with presence information, which identifies one or more users that have conditional access to user presence attribute information, as well as one or more associated access condition entries, which defines the conditions when the user presence attribute information is available to the corresponding one or more users.

In connection with articulating the rejection of the claims, the Examiner appears to acknowledge the noted deficiencies, relative to at least the primary reference Raverdy et al., '217, but then relies upon an alleged teaching in the background description of the present application, which the Examiner characterizes as admitted prior art, as making known the same. However, the particular passages being relied upon in support of the Examiner's assertion are not a characterization of any form of prior art. Such is clear from the context in which the corresponding portion of the background section is presented. In other words, not everything the Examiner attempts to identify as admitted prior art can be fairly characterized as admitted prior art. Furthermore, the Examiner fails to account for the contextual inconsistencies in attempting

to relate the allegedly admitted prior art with the teachings, which can be found in the cited and relied upon references.

Nevertheless, addressing the allegations of admitted prior art, the applicant cannot be any more clear, not everything in the background of the invention represents admitted prior art.

While a portion of the “Background of the Invention” is directed to the state of related technology at the time of the filing, other portions of the background section highlight what can be characterized as an opportunity recognized by the inventor, given the current state of related art.

By way of the background section, the applicant acknowledges that presence attributes historically and at the time of filing are generally used as a way to define, manage and convey a user’s relationship relative to a communication network, the same being specifically noted in the background description at page 1, line 10 to page 2, line 4 of the present application. However, the applicant does not suggest that an ability to define “access conditions” relative to the presence attributes exist in the prior art, nor does the applicant suggest that the access conditions are associated with any defined grouping of one or more particular users that may be attempting to obtain the user present attributes. The Examiner is taking language in the background section out of context, and ignoring the fact that some of the background section is devoted to identifying potential problems and/or deficiencies in the prior art (see page 2, lines 5-18 of the present application), and what may be an opportunity (i.e. possible and/or desirable) should a manner in which to overcome those deficiencies be developed (see page 2, line 19 to page 3, line 2 of the present application).

For example, as part of formulating the rejection, the Examiner references page 2, lines 19-22, as being part of the alleged admitted prior art, relied upon. However, at least this particular section does not form part of any admitted prior art, and therefore the reliance upon such teachings in the manner suggested by the Examiner is misplaced. A full reading of the paragraph, which would place the particular passage in its complete context clearly classifies the passage as being associated with an opportunity, which is not being met by the prior art. The combination of Raverdy et al., ‘217, and the alleged admitted prior art, serves as the basis for rejection of each of the independent claims (claims 1 and 15) as well as the claims which depend

therefrom (claims 6, 7, 10, 11, 16 and 19-22).

As a result not only has the Examiner admitted that some of the claimed elements are neither taught nor suggested by the principal reference, namely Raverdy et al., '217, which is relied upon by the Examiner, but that a characterization of some of the passages in the applicant's background section are required to account for the missing elements. However, as noted above, the alleged passages from the specification, contrary to the Examiner's suggestions, do not constitute admitted prior art. As such, in absence of an alternative applicable prior reference that accounts for the deficiencies of Raverdy et al., '217, the Examiner has failed to establish a *prima facie* case of obviousness.

Correspondingly, contrary to the Examiner's suggestion, the prior art as defined by the background of the invention does not teach or suggest an ability to define **access conditions** relative to the presence attributes, nor is an **association of the access conditions with one or more users** identified in a user field made known or obvious by any discussion from the application that can be fairly characterized as admitted prior art. Hence, the Examiner's rejection of the claims, should be overturned, and the case remanded to the Examiner for further prosecution and/or an allowance of the same.

2. Whether claims 2-5, 13, 14 and 23 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Raverdy et al., US Patent No. 6,957,217, in view of Applicant's Admitted Prior Art, and further in view of Wade et al., US Patent No. 5,552,776.

#### Claims 2-5, 13, 14 and 23

In further formulating his rejection relative to the remaining claims 2-5, 13, 14 and 23, the material defect noted above, continues to be present, in so far as the further rejection of remaining dependent claims 2-5, 13, 14 and 23, as well as independent claim 23 continue to rely upon a mischaracterization of passages from applicant's own specification, which have been mischaracterized as admitted prior art. The further rejection additionally relies upon Wade et al., '776, but Wade et al., '776, fails to account for the claimed features that were inappropriately alleged as being associated with any kind of alleged prior art. As such, the Examiner's final rejection of claims 2-5, 13, 14 and 23, should similarly be overturned, and the case remanded to

the Examiner for further prosecution and/or an allowance of the same.

Conclusion

In view of the fact that the alleged prior art as described in the background of the art section of the present application fails to in fact attribute each and every one of the acknowledged missing features from the primary reference, Raverdy et al., '217, as being part of the acknowledged prior art, the combination of references and teachings relied upon by the Examiner fail to make known or obvious each and every feature of the claims. As a result, the applicant would respectfully request that the Examiner's final rejection of the claims be withdrawn, and that the claims be permitted to proceed to allowance.

Respectfully submitted,

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**VIII****APPENDIX OF CLAIMS**

The following is the text of the claims involved in this appeal:

1. A presence attribute information server comprising:
  - a processor;
  - an interface unit, coupled to the processor, including a network interface for receiving and transmitting user presence attribute information; and
  - a storage unit, coupled to the interface unit and the processor, including user presence attribute information and associated access authorization information organized and arranged as one or more entries in a data structure;
    - wherein said access authorization entries are each associated with corresponding user presence attribute information entries, each user presence attribute information entry having a presence attribute value field, corresponding to one or more types of presence attributes, and each access authorization information entry having a user field identifying one or more users and one or more access condition entries, wherein the access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified one or more users.
2. A presence attribute information server in accordance with claim 1 wherein at least one of the one or more access condition entries includes a predetermined period of time to be matched.

3. A presence attribute information server in accordance with claim 2 wherein the predetermined period of time includes a time of day.
4. A presence attribute information server in accordance with claim 2 wherein the predetermined period of time includes a day of the week.
5. A presence attribute information server in accordance with claim 2 wherein a predetermined period of time includes a point in time identifying the beginning of the predetermined period and a point in time identifying the end of the predetermined period.
6. A presence attribute information server in accordance with claim 1 wherein at least one of the one or more access condition entries includes a proximity relative to a predetermined location.
7. A presence attribute information server in accordance with claim 6 wherein the predetermined location includes a specific place.
8. A presence attribute information server in accordance with claim 6 wherein the predetermined location is the present position of at least one of another item or person.
9. A presence attribute information server in accordance with claim 6 wherein the proximity corresponds to a predetermined distance.

10. A presence attribute information server in accordance with claim 6 wherein the location is relative to the at least one of item or person associated with the user presence attribute information.

11. A presence attribute information server in accordance with claim 6 wherein the location is relative to the user requesting the user presence attribute information.

12. A presence attribute information server in accordance with claim 1 wherein the access condition entries include a flag which, when an access condition is met, identifies whether access to the associated user presence attribute information is authorized or precluded.

13. A presence attribute information server in accordance with claim 1 further comprising an access validation unit, coupled to the interface unit and the storage unit, the access validation unit being adapted for

receiving a request for user presence attribute information,

receiving one or more of status information of the user requesting the information, the status information of the at least one of item or person associated with the user presence attribute information, and the current time and date,

comparing the same to the one or more corresponding access authorization entries, and authorizing access to the presence information, if the appropriate access conditions have

been met.

14. A presence attribute information server in accordance with claim 13 wherein the access validation unit includes a set of prestored instructions for execution by the processor.

15. A presence attribute information manager application comprising:

- a processor;
- an interface unit, coupled to the processor, including a data input device for receiving user presence attribute information from the user and a network interface for transmitting user presence attribute information;
- a storage unit, coupled to the interface unit and the processor, including user presence attribute information and associated access authorization information organized and arranged as one or more entries in a data structure;
- wherein said access authorization entries are each associated with corresponding user presence attribute information entries, each user presence attribute information entry having a presence attribute value field, corresponding to one or more types of presence attributes, and each access authorization information entry having a user field identifying one or more users and one or more access condition entries, wherein the access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified users.

16. A presence attribute information manager application in accordance with claim 15 wherein said interface unit is further adapted for receiving access conditions associated with one

or more users, which are used to formulate access authorization information entries.

17. A presence attribute information manager application in accordance with claim 15 wherein said interface unit further includes a data output device for presenting conditions associated with authorizing access in an iconic format.

18. A presence attribute information manager application in accordance with claim 17 wherein said data input device is further adapted for modifying the conditions being presented by the data output device associated with authorizing access to user presence attribute information associated with one or more users.

19. A presence attribute information manager application in accordance with claim 15 further comprising a broadcast unit, coupled to the interface unit and the storage unit, the broadcast unit being adapted to transmit updated user presence attribute information to at least one of a presence attribute information server and subscribed users, that are currently authorized to receive updates, when the user presence attribute information changes.

20. A presence attribute information manager application in accordance with claim 19 wherein the broadcast unit includes a set of prestored instructions for execution by the processor.

21. A presence attribute information manager application in accordance with claim 15 wherein the presence attribute information manager application is incorporated as part of a

portable electronic device.

22. A presence attribute information manager application in accordance with claim 21 wherein the portable electronic device is a wireless radio frequency telephone.

23. A method for managing the access to user presence attribute information comprising:  
receiving a request for user presence attribute information;  
identifying the user requesting the user presence attribute information;  
determining whether the user requesting the information is authorized to have access to the requested user presence attribute information including  
receiving any conditions relative to the requesting user associated with receiving access to the information, and  
determining whether the received conditions associated with receiving access have been met;  
wherein, if the user has met the conditions associated with receiving access, then forwarding the user presence attribute information to the requesting user.

## **IX EVIDENCE APPENDIX**

None

**X RELATED PROCEEDINGS APPENDIX**

None